



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**JUN 04 2019**

**Certified Mail**  
**Return Receipt Requested**  
**Article Number: 7018 2290 0000 4960 8383**

Kevin Young, Esq.  
Young/Sommer LLC  
Executive Woods  
Five Palisades Drive  
Albany, NY 12205

Re: Norlite LLC

Dear Mr. Young:

I am writing in response to your letter dated December 4, 2018, regarding Norlite LLC's ("Norlite's") compliance with the Clean Air Act's ("CAA") National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") for Hazardous Waste Combustors ("HWCs"), 40 C.F.R. Subpart EEE ("HWC MACT"). In the letter, you question the EPA's allegation that Norlite violated the HWC MACT's requirement to immediately implement new operating parameter limits ("OPLs") when it submitted its Notification of Compliance with the HWC MACT (along with new OPLs) in 2011, and thereafter repeatedly operated outside of several of the OPLs, thus violating the corresponding emissions standards. *See* 40 C.F.R. §§ 63.1207(j)(1)(i) & (ii) and 40 C.F.R. § 63.1206(c)(1)(iii).

In your letter, you state that at the time of the EPA's inspection in 2015, Norlite was subject to OPLs established during a 2004 comprehensive performance test ("CPT") of its air pollution controls, and not the OPLs established during the 2011 CPT. You note in particular: (1) that it was not practical for Norlite to comply with both the 2004 and 2011 OPLs because they are based on different "operating windows," and (2) that the New York State Department of Environmental Conservation ("DEC") "required" Norlite to implement the 2004 OPLs that were in Norlite's hazardous waste permit instead of the 2011 OPLs established under the HWC MACT.

As an initial matter, I note that your arguments are largely duplicative of the ones made in your November 5, 2018 letter, which I responded to in an email I sent you on November 7, 2018. As the EPA has explained, under 40 C.F.R. § 63.1207(j)(1)(ii), the OPLs that were based on the 2011 CPT became legally binding on Norlite when it submitted its Notification of Completion in April 2011. The EPA is aware that there are some differences (albeit many of them very minor) between the 2004 and 2011 OPLs. There is, however, no reason that Norlite would have been relieved of its duty to comply with the new limits (to the extent they were more stringent than the limits contained in Norlite's hazardous waste permit from DEC); nor are we persuaded that it would have been technically or operationally impractical for Norlite to program its automatic waste feed cutoff (AWFCO) system alarm setpoints to be based on the most stringent of the respective 2004 and 2011 OPLs.

While your letter repeatedly asserts the impossibility of complying with the most stringent of the two sets of OPLs and their associated “operating windows,” no specific OPLs are cited as being problematic. The letter states that “you cannot pick and choose selected parameters in isolation,” but does not describe any specific operational difficulty that would have made it impossible to meet the more stringent of the limits for the respective parameters; and as noted above, many of the 2004 and 2011 OPL values are nearly identical or very similar.

To the extent Norlite is arguing that it was *prohibited* by its 2008 hazardous waste permit from DEC to follow more stringent OPLs (derived from the 2011 CPT) for certain parameters than the ones set by the 2008 permit, we are not aware of any legal support for that argument. You also have provided no evidence that DEC directed Norlite to ignore the 2011 OPLs, or that Norlite communicated with DEC about the purported conflict between the 2004 and 2011 OPLs, or requested a modification of its hazardous waste permit to incorporate the 2011 OPLs. Finally, it is axiomatic that even if DEC did not notify Norlite of noncompliance with the 2011 OPLs, that does not authorize or excuse any such violations by the company.

In addition, Norlite has not refuted EPA’s allegation that Norlite violated the Clean Air Act by exceeding the applicable emission limits for chromium, arsenic, and beryllium during a comprehensive performance test conducted in December 2017. *See* 40 CFR §63.1221(a)(4).


As I stated in my August 30, 2018 email to you, based on Norlite’s own data the EPA determined that Kiln 1 and Kiln 2 at the facility were operated for hundreds of days outside of several applicable OPLs. This is a significant degree of noncompliance with legal limits that are established for the protection of human health and the environment. Therefore, we continue to believe that the civil penalty amount we proposed is fair and appropriate. If you would like to make a serious settlement offer, we will consider it. However, we request that you do so soon, well in advance of the end of the current statute of limitations tolling period (June 30, 2019).

Your letter also invited EPA Regional Administrator Peter Lopez and Region 2 staff to tour the Norlite facility to learn about its plans to replace its air pollution controls and “the EPA’s enforcement posture.” We thank you for your invitation but find that at this time we must decline it, as we do not believe such a visit would add to our understanding of the alleged CAA violations. We are aware of Norlite’s planned changes and also know that they are not being contemplated in response to the EPA’s CAA enforcement action (but rather, to comply with certain Clean Water Act effluent limits).

If you are, however, still interested in discussing this matter with EPA management, Eric Schaaf, the Regional Counsel of EPA Region 2, together with myself and other staff, would be willing to meet with you and your client in our New York City office. If you would like to have such a meeting, please let me know within the next two weeks, and we will work to schedule it.

If you have any questions, please contact me at 212-637-3203.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Saporita", with a long horizontal flourish extending to the right.

Chris Saporita  
Assistant Regional Counsel